

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re Marriage of SIMON and GRACE
KUO.

B241858

GRACE KUO,

(Los Angeles County
Super. Ct. No. VD069917)

Respondent,

v.

SIMON KUO,

Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County,
William A. Allen, Judge. Affirmed.

Simon Kuo, in pro. per., for Appellant.

John A. Balent for Respondent.

Appellant Simon Kuo (Simon) married Grace Kuo (Grace) on July 6, 1986. Grace filed a petition for dissolution on May 22, 2009. On August 1, 2011, both parties appeared in court with counsel and indicated they had reached a property settlement. The settlement agreement was read in court, the parties indicated their agreement, and a judgment of dissolution was subsequently entered. Simon's motion to set aside the judgment was denied. Simon appeals, contending, inter alia, that he was misled by his attorney into entering into the settlement agreement. We affirm the judgment.

FACTUAL & PROCEDURAL BACKGROUND

During their marriage, Simon and Grace owned two properties on Stefani Avenue in Cerritos, one at 19036 (the 036 house) and one at 19030 (the 030 house). There was a home equity line of credit with a balance of approximately \$91,000 on the 030 house.

Trial was set in their dissolution proceedings for August 1, 2011. On that date, both Simon and Grace appeared in court with counsel. Counsel indicated to the court that the parties had reached a property settlement agreement. Mr. Brown, Simon's counsel, stated: "[T]here are two homes here: . . . Those are going to be awarded to [Simon]. And [Grace] will prepare—or sign a quitclaim deed. They're both owned free and clear. . . . In addition, there is—as a way of equalization, [Simon] would pay to [Grace] the sum of \$155,000, minus \$91,000 that exists on a home equity line of credit. So, [Simon] will refinance one of the houses and pay off that home equity line of credit and then pay the sum of \$64,000 to [Grace]. And that has to be done within 90 days. That would, then, equalize the property between the parties. . . ."

Grace was asked by her lawyers whether she understood the division of properties and the equalization payment and she indicated her assent.

The following colloquy then took place between Brown and Simon: "Mr. Brown: Listen to me. I stated to the court what the division of property is going to be. [¶] Do you agree to that division and to be bound by it, of that division? [¶] [Simon]: Yes. [¶] Mr. Brown: And you understand that you have 90 days to refinance the property or one of the properties, however you'd like to do it, and pay off the home equity line of credit

on the 030 property and pay to [Grace] the sum of \$64,000? [¶] Do you understand that? [¶] [Simon]: Yes, sir.”

The court granted the dissolution and Brown stated he would prepare the judgment.

On October 3, 2011, Brown wrote to Simon, stating that he would no longer represent him. Brown told Simon he had three options: to sign and return the judgment; to sign a Substitution of Attorney; or to have Brown file a motion to be relieved as counsel.

In October 2011, both parties signed a settlement agreement in accordance with the terms indicated in court, which provided that Simon was awarded the two properties and ordered to pay Grace “an equalization payment of \$155,000.00 minus the pay-off of the home equity line of credit in the sum of \$91,000.00, leaving a balance of \$64,000.00 payable within 90 days upon execution of this Judgment.” Both counsel also signed the agreement.

On October 25, 2011, the family law commissioner signed the judgment which incorporated the terms of the settlement agreement and judgment was entered that day.

On the day the judgment was signed, October 25, 2011, Simon wrote to Brown, indicating he wanted to discuss some serious mistakes, and that he thought Brown agreed that he could be awarded sole ownership of the 036 house. Brown wrote back, denying that he ever told Simon he had a right to the property, and that no mistakes were made. He told Simon if he wanted to challenge the settlement agreement, he would have to hire new counsel.

On March 5, 2012, Simon moved to set aside the judgment. Simon claimed Brown misled him in front of two witnesses (his mother and his sister), by telling him the judgment payment would be \$138,000, and failed to explain the details of the payment. He attached a declaration from his sister stating that Brown had first told them the amount of the equalization payment was \$87,000, then told them to accept the new payment amount of \$138,000.

At the April 9, 2012 hearing, Simon appeared in pro per and Grace's counsel appeared. Grace's counsel informed the court that the \$64,000 was an exact compromise between the two figures submitted by the parties. Simon said the reason he was coerced into signing the judgment was because Brown gave him only one day to sign it or he would have to pay an additional \$2,500.

The motion was denied. The court stated in its minute order: "The court notes the judgment has been signed by all parties and approved as to form and content. [¶] Therefore, the motion is denied" Simon appealed.

CONTENTIONS ON APPEAL

Simon contends on appeal that (1) the trial court erred in ruling that he willingly signed the stipulated judgment; (2) the calculations made by Grace's counsel on the equalization payment were incorrect and the trial court erred in agreeing with these calculations; (3) the reporter's transcript was erroneous and reveals a number of factual inconsistencies in the representations of the parties; (4) the clerk's transcript shows various misrepresentations made by Brown; and (5) based on the various questions raised by the documents and reporter's transcript, the amount of the equalization payment was fabricated by Brown.

Simon's brief, filed in pro per, also raises a number of factual allegations about his marriage. They are briefly summarized as follows:

1. Before they were married, Simon bought the 036 house from his sister and added Grace's name in order to get a better loan; however he paid the entire down payment and for all furnishings.

2. He and Grace signed a pre-marital agreement in 1985 in which Grace renounced her ownership of the 036 house.

3. Simon and Grace have always kept separate accounts. They created a "fake" joint account for Grace's own purposes.

4. They bought the 030 house in 1988 for Simon's parents. Simon's parents paid the down payment, but agreed to put Grace's name on the title with Simon. Simon's

parents only occupied one room and the other three bedrooms were rented out to pay for Simon and Grace's expenses.

5. Grace agreed to sign a quitclaim deed for the 036 house.
6. Grace got a job because of Simon's encouragement and the help of Simon's friend.
7. Simon quit his job in May 1990 to take care of his parents and children, but paid the monthly loan payment for the 036 house.
8. Simon's parents spent a significant amount of money for remodeling the two houses.
9. Grace had sex with one of the tenants, and also used her engagement to Simon to entice another man to marry her.
10. Grace moved out of the house in 2004 and never made any payments thereafter for either the 030 and 036 houses.
11. Simon believes Grace stole the copy of the premarital agreement and the quitclaim deed when she moved out.
12. Simon paid off the mortgages on the 030 and 036 houses by himself. He used an equity line of credit and credit cards to make those payments.
13. Grace's average annual income during the time they were living together was over three times that of Simon's.
14. Since separation, Grace continued to file a joint tax return with Simon, resulting in a significant tax savings, due to the home ownership and Simon's low income.

Simon then goes on to make several factual allegations about representations made to him by his former attorney Brown. Those allegations are summarized as follows:

1. Brown gave Simon only one day's notice of Grace's deposition, so Simon did not arrive on time. Simon later noticed part of the deposition was "deleted."
2. Simon replaced Brown with another attorney in June 2010, but re-hired Brown back after a year and a half.

3. Simon asked Brown to subpoena Grace's bank records, but Brown intentionally delayed acting and did not subpoena all of Grace's records as requested.

4. Brown wrote a letter to the trial court judge rebutting the statements Grace made in her deposition.

5. Prior to trial, there was a four-hour long meeting between Grace's counsel and Brown, which Brown did not mention to Simon.

6. After that meeting, Brown told Simon, in the presence of Simon's sister and Simon's mother that the equalization payment would be \$87,000. Brown then told Simon, in front of Simon's sister and Simon's mother that the proposed equalization payment was \$138,000 and that since Grace had cancer, they should accept it and amend it later.

7. Simon says Brown was "strangely shivering" when laying out the property settlement in court.

8. Later that day, Simon wrote an email to Brown asking for further explanation of the \$135,000 equalization payment but Brown ignored that request.

9. Brown delayed unduly in preparing the judgment despite Simon's numerous calls and request for explanation.

10. When Simon finally received a copy of the proposed judgment in September 2011, it reflected the equalization payment was now \$155,000. Simon immediately emailed Brown but Brown did not respond.

11. On October 3, 2011, Simon met with Brown and Brown explained that the \$155,000 was the average of the \$138,000 proposed by Brown and the \$172,000 proposed by Grace's attorney. When Simon attempted to argue, Brown asked him to leave immediately.

12. The following day, Simon received a letter from Brown which accused Simon of lying and falsifying information. Brown coerced Simon into signing and returning the judgment by claiming that he would charge Simon an extra \$2,500 for a Substitution of Attorney form.

13. Simon attempted to further demand explanations from Brown during October and November 2011 and on November 3, 2011, Simon received Brown's Notice of Withdrawal of Attorney.

After oral argument Simon filed a letter brief without seeking permission of the court which reiterated some of his earlier arguments but also argued that Grace's 401K plan and Simon's credit card balances should have been taken into account and that Grace's brief was not in proper format. We subsequently granted leave to file the letter brief on December 12, 2013.

DISCUSSION

Because Simon stated in court that he agreed to the terms of the property settlement and later signed the stipulation which conformed with those representations made in court, none of Simon's factual allegations are relevant to his appeal except for the fact that he claims he was coerced into agreeing by his attorney, Brown.

The trial court did not make any findings or rulings under Code of Civil Procedure section 473, subdivision (b).¹ In any event, Simon was not entitled to relief under that section.

Nor has Simon shown any equitable grounds for setting aside the judgment. (See Cal. Const., art. VI, § 13 [only error causing miscarriage of justice is proper ground for setting aside judgment].)

Simon's complaint is not properly directed at the trial court, which acted well within its discretion in entering judgment after the assent by the parties. Nothing on this

¹ Upon a showing of "mistake, inadvertence, surprise, or excusable neglect," the court has discretion [under Code of Civil Procedure section 473, subdivision (b)] to allow relief from a 'judgment, dismissal, order, or other proceeding taken against' a party or his or her attorney." (*Leader v. Health Industries of America* (2001) 89 Cal.App.4th 603, 615-616.) We review the trial court's ruling under this provision for an abuse of discretion. (*Zamora v. Clayborn Contacting Group, Inc.* (2002) 28 Cal.4th 249, 257; *State Farm Fire & Casualty v. Pietak* (2001) 90 Cal.App.4th 600, 610.)

record establishes that Simon was coerced by the court into stating on the record that he agreed with the \$64,000 payment or the other terms of the settlement agreement. Simon's allegations are instead largely addressed to actions, or failures to act, by his lawyer. As such, if Simon's allegations about Brown can be established, Simon's redress would be an action for legal malpractice. (See *Carroll v. Abbott Laboratories, Inc.* (1982) 32 Cal.3d 892, 898.)

DISPOSITION

The judgment is affirmed. Grace is entitled to recover her costs on appeal from Simon.

WOODS, J.

We concur:

PERLUSS, P. J.

ZELON, J.